HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

WPMS No. 997 of 2005
WPMS No. 986 of 2005

Rakesh Kumar and Ravindara Kumar

Vs.

Sub Registrar, Dehradun and others.

Approved for reporting.

~~Not approved for reporting~~

Dated of decision 08.05.2006

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 986 (MS) OF 2005

Rakesh Kumar,
S/o Shri Surendra Singh,
R/o Village Badripur, pargana Parwadoon,
District Dehradun. .....Petitioner

Versus

1. Sub Registrar, Dehradun.
2. Indresh Kumar,
   S/O Late Ch. Baru Singh,
   R/O Village Badripur, Pargana Parwadoon,
   District Dehradun.
3. D.P. Singh,
   S/O Shri Sobran Singh,
   R/O 121/64, Narishilp Mandir Marg,
   Dehradun.
4. Collector, Dehradun,
5. Civil Judge (Senior Division) /IIIrd FTC, Dehradun.

.....Respondents.

Writ Petition No. 997 of 2005 (MS)

1. Ravindra Kumar, S/o Sri Surendra Singh
   Village Badripur, Parwadoon,
   District Dehradun.
2. Arun Kumar S/o Sri Surendra Singh
   Village Badripur, ParganaParwadoon,
   District Dehradun.

.....Petitioner

Versus

1. Sub Registrar, Dehradun.
2. Indresh Kumar,
   S/O Late Ch. Baru Singh,
   R/O Village Badripur, Pargana Parwadoon,
   District Dehradun.
3. D.P. Singh,
   S/O Shri Sobran Singh,
   R/O 121/64, Narishilp Mandir Marg,
   Dehradun.

4. Collector, Dehradun,
5. Civil Judge (Senior Division) /IIIrd FTC, Dehradun.

.....Respondents.

Dated: 8-5-2006

Hon'ble Rajesh Tandon, J.

Heard Sri L.P. Naithani, Sr. Advocate, assisted by Sri Ramji Srivastava, learned counsel for the petitioner, Sri Lok Pal Singh, learned counsel for the respondents no. 2 and 3 and learned Standing Counsel for respondents no. 1, 4 and 5.

By the present writ petitions, the petitioners have prayed for a writ of certiorari quashing the order dated 25th August, 2005 (Annexure 12 to the writ petition) passed by the Sub-Registrar, Dehradun respondent no. 1 as well as the Registration of Sale Deed dated 24th August, 2005 (Annexure 11 to the writ petition).

Briefly stated the plaintiffs/respondent no. 2 and 3 filed an original suit no. 257 of 1994 Indresh Kumar and another vs. Rakesh Kumar and another before the Civil Judge, Dehradun for specific performance. The said suit was decreed vide judgment and order dated 13/7/2001. Thereafter respondent no. 2 filed execution case No. 19 of 2001 Indresh Kumar vs. Rakesh Kumar in which the petitioners have filed objection under section 47 of the Code of Civil Procedure and a Misc. Case No. 23 of 2004 Rakesh Kumar vs. Indresh Kumar and another was registered. The executing Court rejected the objection of the petitioners vide order dated 6.10.2004 on the ground that the objection of the petitioners with regard to section 52 of the Transfer of Property Act is not maintainable. According to the petitioners the order dated 6.10.2004 has to abide with clause 154 (4) as amended in Uttaranchal State in Z.A. & L.R. Act. According to the said amendment any registered agreement prior to 12.09.2003 shall be valid and operative if the

agreement is executed before 31.3.2004 or the extended period of 31.3.2005. According to the amendment all registered agreement shall be treated as void and unenforceable, if they did not comply with the provisions of section 154 (4) of Z.A. Act as amended in State of Uttaranchal. Subsequently, the petitioner filed another objection under section 47 C.P.C. in execution case No. 19 of 2001 Indresh Kumar and another vs. Rakesh Kumar before the Executing Court, inter alia on the ground that in view of the Uttaranchal amendment in Uttar Paredsh Zamindari Abolition and Land Reform Act 1952 the decree is void and the same cannot be made executable because of legal impediment. On the basis of objection of the petitioner, a Misc. Case No. 39 of 2004 Rakesh Kumar Vs. Indresh Kumar and another was registered.

According to the petitioners the land in dispute is agricultural land and is governed by the provisions of Uttar Pradesh Zamindari Abolition and Land Reform Act 1952 and in view of section 168 of Uttar Pradesh Zamindari Abolition and Land Reforms Act the land in dispute cannot be transferred in-fragment. New sections 154 (3) (4) & (5) have been added in the Uttar Pradesh Zamindari Abolition and Land Reforms Act by virtue of Uttaranchal amendment and the execution of sale deed in pursuance of an agreement to sell, executed prior to 12.9.2003 is barred by the provisions of section 154 (4)(b) of amended Act 1952 subsequently to 31.34.2004.

However, Civil Judge vide order dated 23.4.2005 has rejected the objection of the petitioners on the ground that the objection of the petitioners have already been rejected on merits, therefore, the constructive res judicata will apply and in view of the same the second objection is not maintainable.

The petitioners approached the High Court in W.P. No. 453 of 2005. On 19.07.2005, High Court has rejected the writ petition. The petitioners have approached the Supreme Court in

S.L.P. No. 12597 of 2005 and the Hon. Apex Court has passed the order to the following effect:-

"Issue notice.

Mr. Pravir Kumar Jain, learned counsel accepts notice on behalf of Respondent No. 1.

We, however, clarify that there is no stay and the execution must proceed, in the meantime.

In pursuance of the aforesaid order, the sale deed was presented before the Sub-Registrar for registration and has been executed on 25.05.2005.

Another writ petition no. 484 of 2005 Ravindra Kumar and another vs. Civil Judge (Senior Division), Dehradun was also filed before the High Court challenging the order dated 6.10.2004, passed by the Executing Court, rejecting the objection of the petitioners, which is still pending.

On 12.1.2005 the petitioners filed an objection before the Civil Judge, Dehradun who rejected the same vide order dated 29.7.2005. The respondent no. 2 and 3 were also directed to submit the sale deed before the Court, after affixing the requiredstamp/court fee, within 7 days but subsequently that order was modified vide order dated 10.08.2005.

The petitioners have submitted that the objection were filed before the Sub Registrar, Dehradun on 4.8.2005 stating therein that the stamp duty, affixed in the document is not proper. It has been specifically mentioned that the stamp duty over the property in dispute is about Rs. 37,07,305.00 while the respondents no. 2 and 3 have paid Rs. 3,85,000.00 only. The petitioners have submitted that in the case of Kushalpal Bhandari the Additional District Magistrate (Finance) vide order dated 28.05.2005 has held that the duty should be paid at the rate of Rs. 3500.00 per sq.m. In respect of the land in dispute. The petitioners filed a copy of the order dated 28.5.2005, passed by Additional District Magistrate (Finance) before the Civil Judge, but the Executing court was of the view

that the Collector alone can determine the amount after hearing the parties.

The petitioners have filed their objections before the Sub registrar, Dehradun stating therein that in compliance of the order of Civil Judge, he may first get an order form the Collector under Section 31 of the Stamp Act. The respondent no. 2 and 3 also submitted their objections before the Sub Registrar, Dehradun on 24.8.2005. The Sub Registrar, Dehradun registered the document on 24.8.2005 under section 52 of the Registration Act, without deciding the objections.

The counsel for the petitioners has submitted that the document itself is invalid. The value of his property has been adversely affected. The Civil Judge, Dehradun in Execution Case No. 20 of 2001 Indresh Kumar and another vs. Ravindra Kumar and another, vide order dated 29.5.2005 held as under:

,slh IkfjfLFkfr;ksa esa tcfd fodz; foys[k dk lEiknu vHkh fd;k tkuk gS ;g fMdzh/kkjd ls visf{kr gS fd og orZeku lfdZy nj ls lEifRr dk ewY;kadu djrs gq, ml ij LVkEi ‘kqYd fn;k tkuk lqfuf’pr djs ‘ks’k tks Hkh vkifRr;kW fu.khZr _.kh }kjk LVkEi ewY; ds lUnHkZ esa mVkbZ x;h gS muesa ls fdlh Hkh vkiFr dk fuLrkj.k Lo;a muds rdksZ ds vuq:i bl U;k;ky; dks djus dk vf/kdkj ugha gS oju ;g fofu p djus dk vf/kdkj Hkkjrh; LVkEi vf/kfu;e dh /kkjk 31 ds vUrZxr ek= dysDVj dks gS rdZ ds nkSjku ;g fLFkfr Li”V gS fd ;fn fodz; foys[k ds iathdj.k ds le; LVkEi ‘kqYd dh dksbZ deh izrhr Hkh gksrh gS rks og ml Lrj ij iwjh djk;h tk ldrh gS vkSj ofg ij ;g rF; fofu’p; fd;k tk ldrk gSA

The counsel for the petitioners has submitted that the registration has been done in violation of Section 47(A) and 47(G) of the Indian Stamp Act. The sub Registrar referred the matter to the Collector (Stamp) vide letter dated 25.8.2005. the extract of the letter is quoted below:

egksn;]

,d ys[ki= tks ekuuh; flfoy tt ¼,l0Mh0½@,Q0Vh0 lh0 nsgjknwu }kjk fu”ikfnr dj dzsrk bUnªs’k dqekj vkfn ds i{k esa Hkwfe/kjh [kljk

ua0 …‡‰ {ks=Qy „&‡„ ,dM d`f"k Hkwfe fLFkr cnªhiqj ijxuk ijoknwu nsgjknwu ftldh ekfy;r „‡]‡0]000-00 :i;s dh ekfy;r ij LVkEi vnk fd;k x;k gSA bl lUnHkZ esa oknh rFkk izfroknh i{kdkjksa }kjk dbZ izkFkZuk i= layXu fofHkUu frfFk;ksa dsa bl dk;kZy; esa izLrqr fd;s x;s gSaA mDr ewy ys[k i= e; lEcfU/kr ,rjkt i=ksa ds vkidh lsokesa mfpr fu.kZ; gsrq laizsf"kr gSaA

This Court on 8.9.2005 has passed the following interim order.

"Admit. Issue notice.

Sri Lok Pal Singh leanred counsel for the respondents prays for and is granted two weeks' time to file a counter affidavit. Rejoinder affidavit may be filed within a week thereafter.

However, so far as the first part of the order i.e. the registration of document is concerned, the same shall not be given effect to only for a period of three weeks.

However, so far as the second part of the order with regard to the sending the matter to the Collector is concerned, both the counsel Sri. L.P. Naithani, Sri Advocate and Sri Lok Pal Singh, learned counsel for the respondents have submitted that let the Collector decide the matter in accordance with law.

In view the above, the second part of the order dated 25th August 2005 is not stayed.

However, in view of the above, it will be open for the Collector to decide the reference in accordance with law expeditiously."

Section 47(A) of the Stamp Act, reads as under:

"If the market value of any property, which is the subject of any instrument, on which duty is chargeable on market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of

such instrument, and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908."

The Sub Registrar has also given reference of section 47A read with Rule 350 of Stamp Manual while taking the stamp duty into account. A perusal of both the orders shows that rules have not been taken into consideration and even Rule 341 of U.P. Stamp (Valuation of Property) Act, has not been taken into consideration.

Rule 340 provides the rules for determining the market value of certain instruments and Rules 341 provides the criteria.

The subject matter of instrument being covered under Rule 341 (1), Rule 341 is quoted below:-

341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in section 47-A(1) of the Act shall be deemed to be not less than that as arrived on the basis of the multiplies given below:

(i) Where the subject is land-

(a) in case of Bhumidhari –800 times the land revenue;

(b) in case of Sirdari land-400 times the land revenue;

(c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument 25 times the annual average of such profits;

(d) where the land is not assessed to revenue and not profits have arisen from it during the three years

immediately proceeding the date of the instrument 400 times the assumed annual rent;

(e) where the land is non-agricultural and is situate within the limits of any local body referred to in clause © of the sub-rule (i) Rule 340 –equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument.

(ii) where the subject is grove or garden---

(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the trees standing thereon shall be worked out according to the average price of the tree of the same size, and age prevailing in the locality on the date of instrument.

(b) If not assessed to revenue or in exempted from it, the value thereof shall be determined at 20 times the annual rent plus the premium or 20 times of the annual average of income which has arisen during the three years immediately preceding the date of instrument and the value of the trees thereon shall be determined in accordance with Rule 341(ii) (a).

(iii) Where the subject is building-

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants---25 times the actual or assessed annual rental value, whichever is higher as the case may be."

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants- 25 times the actual or assumed annual rental value, whichever is higher as the case may be."

Rule 3 and 4 of the U.P. Stamp (Valuation of Property) Rules, 1997 also provide the criteria and the same are quoted below:-

"3. ***Facts to the set forth in an instrument.-****In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property;-*

(1) In case of land.

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures:-

(i) the Khasra number and area of each plot forming part of the subject matter of the instrument;

(ii) whether irrigated or un-irrigated and if irrigated., the source of irrigation;

(iii) if under cultivation whether do-fasali or otherwise;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder;

(v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law;

(iv) location (whether lies in an urban area, semi-urban area, or country side); and

(vii) minimum value fixed by the Collector of the district;"

4. Fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent and commercial building.-

(1) The Collector of district shall biennially, as far as minimum value per acre/per square meter of land, the minimum value per square meter of construction of non-commercial building and the minimum monthly rent per square meter of commercial building, situated in different parts of the district taking into consideration the following facts-

(a) in case of land-

(i) classification of soil;

(ii) availability irrigation facility;

(iii) proximity to road, market, bus-station, railway station, factories, educational institutions, hospitals and government officers; and

(iv) location with reference to its situation in urban area, semi-urban area or countryside."

In ***Ramesh Chandra Bansal Vs. District Magistrate/Collector Ghaziabad 1999 (90)RD 499****, the Apex Court has observed that the object of the Indian Stamp Act is to calculate the proper stamp duty on an instrument or conveyance on which such duty is payable. The Apex Court has observed as under:-*

"The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under-valuation of a property or owner consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true vale for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector

has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned."

Thus before a document is registered under Section 52 of the Registration Act, it is necessary to follow the provisions of section 47(A) as amended by the State of U.P. in the Indian Stamp Act.

The property in question is adjacent to Haridwar road. The property is undivided property. The registering authority has not impounded the instrument as provided under section 33 of the Stamp Act. It was the duty of the registering authority to refer the matter to the Collector, who alone could fix the stamp duty to pay on the impugned document with penalty to be paid on the same.

The Apex Court in the case Chilakuri Gangulappa vs. Revenue Divisional Officer, Madanapalle and another 2001 AIR SCW 1174 has held that the action of civil Court in similar case is improper. The Apex Court has observed as under:-

Sub-section (2) of Section 47-A of the Act says that the Collector shall have the power to determine the market value of the property which is the subject-matter of such instrument and the duty payable thereon. Sub-section (3) empowers the Collector to take action, suo motu, within two years from the date of the registration. Sub-section (4) has to be read in this context:

"47-A. (4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the Appellate Authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

There is a proviso to sub-section (2) which contains a bridle on the appellate provision envisaged in sub-section (4). Heard that proviso has to be read:

"Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him."

The matter was referred to the Collector vide order dated 25.08.2005. However, the parties have submitted that nothing has been done by the Collector in the matter till now.

In view of the above, so far as the reference dated 25.08.2005, made by the Sub Registrar to the Collector, Haridwar no interference is required under Article 226/227 of the Constitution of India. He is empowered to pass the order in pursuance of the reference made on 25.08.2005. The Collector is directed to decide the same in the light of the observations made above and in accordance with law, within a period of two months after obtaining the certified copy of this order. However, during this period the interim orders dated 8.9.2005, so far as effect of the document is concerned the same shall continue.

Accordingly, writ petition partly succeeds and is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 08.05.2006

*Dhyani